



July 9, 2002

Ms. Julie Y. Fort
Abernathy, Roeder, Boyd, & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2002-3720

Dear Ms. Fort:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165272.

The Frisco Economic Development Corporation (the "corporation"), which you represent, received a request for "the details of the incentives offered to [EADS/ Intecom ("Intecom")] and any related parties relative to a proposed move from the Town of Addison to the City of Frisco." In response to a request for clarification, the requestor added a request for "policies, procedures, guidelines and evaluation criteria relating to incentives used by the [corporation]." You state that the corporation has no information regarding any parties related to Intecom and inform us that you will be providing the requestor with general information regarding the corporation's policies.¹ You claim that the remaining requested information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information.²

We first note that Exhibit D includes the agenda and minutes of a public meeting of the corporation. The minutes, tape recordings, and agendas of a governmental body's public meetings are specifically made public by statute, see Gov't Code 551.022 (minutes and tape

¹ It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351.

² We note that you have submitted as Exhibit E other information regarding the corporation and Intecom. As this information does not pertain to the incentives offered by the corporation, it is non-responsive, and we do not address it in this ruling.

recordings), 551.043 (notice), and therefore may not be withheld from the public pursuant to section 552.131 of the Government Code. Information specifically made public by statute may not be withheld from the public under any of the Public Information Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the corporation must release the marked agenda and minutes.

As for the remainder of Exhibit D, you assert that it is excepted under section 552.131 of the Government Code. Section 552.131 provides:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.

(c) After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:

(1) by the governmental body; or

(2) by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.

Gov't Code, § 552.131. You explain that the corporation is currently involved in negotiations with Intecom regarding possible relocation of Intecom's business operations to the City of Frisco. You indicate that the requested documents, which you have submitted as Exhibit D, constitute economic development incentives that have been offered to Intecom. You also state that economic development negotiations are ongoing between the corporation

and Intecom and have yet to result in an agreement. Based on your representations and our review of the submitted information, we conclude that you may withhold the remainder of Exhibit D pursuant to section 552.131(b) of the Government Code. We note, however, that the applicability of section 552.131(b) ends once an agreement is made with the business prospect. Gov't Code § 552.131(b), (c).

In summary, the corporation must release the marked agenda and minutes from its open meeting. The remainder of Exhibit D may be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

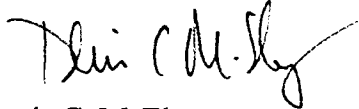
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 165272

Enc. Submitted documents

c: Ms. Susan Mead
Jenkins & Gilchrist, P.C.
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202
(w/o enclosures)